

## REMARKS

This Amendment is in response to the Office Action, dated June 9, 2009 ("Office Action"). It is respectfully submitted that the application is in condition for allowance. Claims 1, 4-6, 8-9, 12-16, and 19 have been amended; and claims 7, 10-11, 18 and 20-22 have been cancelled; and claims 23-33 have been added by virtue of the present amendment. Claims 1, 4-6, 8-9, 12-16, 18, and 23-33 are pending. No new matter has been added. Allowance and reconsideration of the application in view of Applicant's amendment and the ensuing remarks are respectfully requested.

On September 10, 2009, an interview was conducted between Applicant's counsel, Linda Truong and Examiner Jeffrey S. Parkin. The rejections were discussed. Examiner Parkin clarified the enablement rejection. He indicated that the claim language he suggested intends to allow for additional amino acids at the C-terminus and/or the N-terminus of the polypeptide since the "comprising" transitional phrase language would necessarily allow for the possibility of additional amino acids at the C-terminus and/or the N-terminus. Examiner Parkin raised a concern regarding claim 5 on whether the polypeptide would retain its antiviral activity with a substitution of phenylalanine. Examiner Parkin further raised a concern regarding claim 13 because it appeared to him that the polypeptide with SEQ ID No. 7 had little antiviral activity. Additionally, Examiner Parkin indicated that he would allow claims directed to polypeptides derived from the apoE<sub>141-149</sub> tandem repeat for which data in the specification support their antiviral activity. With respect to rejoinder of claim 19, Examiner Parkin indicated that the claim can be rejoined once the product claims are deemed allowable and suggested amending the claim to recite that the method is for inhibiting viral replication. Applicant thanks Examiner Parkin for his time and assistance with this application.

Claim 1 has been amended to recite that the polypeptide is an "isolated and purified antiviral" polypeptide and that the polypeptide comprises one or more amino acid substitutions of tryptophan (W) for leucine (L). References to derivatives and

truncations are deleted. No new matter is added. Support for the amendment may be found throughout the specification.

Claims 4-6, 8-9, 12-16, and 19 have been amended to delete references to a derivative. No new matter is added. Support for the amendment may be found throughout the specification.

Claims 23-31, dependent on claim 19, have been added and are directed to a method of inhibiting viral replication using polypeptides as claimed in claims 4-6, 8-9, and 12-15. No new matter is added. Support for the amendment may be found throughout the specification.

Claim 32 has been added and claims certain isolated and purified antiviral polypeptides derived from the apoE<sub>141-149</sub> tandem repeat set forth in SEQ ID No. 2. Support for the amendment may be found throughout the specification; for example Tables 4, 6, 7 and 8 of the specification.

Claim 33 has been added and claims a method of inhibiting viral replication in a subject in need of such treatment comprising administering a therapeutically effective amount of a polypeptide claimed in claim 32. Support for the amendment may be found throughout the specification; for example Tables 4, 6, 7 and 8, original claim 19 and pages 12- 13, 22, and 17-39 of the specification.

In the Office Action, the Examiner acknowledged receipt of Applicant's sequence listing filed March 26, 2009. The Examiner also acknowledged receipt of the replacement drawings filed March 26, 2009. Applicant thanks the Examiner for confirming compliance and entry of the sequence listing, as well as confirming acceptance and entry of the drawings.

The Examiner also confirmed that the previous rejection of claims 1 and 4-16 under 35 U.S.C. §112, second paragraph, as being indefinite is withdrawn. Applicant thanks the Examiner for the withdrawal of this rejection.

Claims 1 and 4-16 stand rejected under 35 U.S.C. §112, first paragraph, as lacking enablement for reasons of record. The Examiner indicated that amending claim

1 to recite "[a]n isolated and purified antiviral polypeptide comprising between 14 and 18 amino acids of the apoE<sub>141-149</sub> tandem repeat set forth in SEQ ID NO.: 2, wherein said polypeptide comprises one or more amino acid substitutions of tryptophan (W) for leucine (L)" would be acceptable and thus, be enabled by the specification. With respect to cancelled claims 7, 10 and 11, this rejection is moot. With respect to the remaining claims, Applicant respectfully traverses this rejection.


While Applicant does not concede to the merits of the Examiner's rejection, in an effort to advance prosecution, the claims have been amended as suggested by the Examiner. With respect to claim 5 as discussed in the Interview, Applicant submits that on page 35, paragraph 4 of the specification as filed, the specification teaches that substitution of leucine with phenylalanine (F) had efficacy comparable with the apoE tandem repeat. With respect to the Examiner's concern about the antiviral activity of SEQ ID No. 7 of claim 13, Applicant submit that table 6 of the specification shows antiviral activity of SEQ ID No. 7. Under §112, first paragraph, the showing that one of skill in the art can make and use the polypeptide of Claim 13 is all that is required for a showing of enablement; that is, a polypeptide comprising SEQ ID. No. 7 can be made and is useful. There is no requirement of a higher level of antiviral activity. One of ordinary skill in the art will readily appreciate that the antiviral activity possessed by the polypeptide in claim 13 is useful.

In light of the foregoing, Applicant respectfully requests that this rejection under 35 U.S.C. §112, first paragraph, be withdrawn.

Applicants respectfully submit that independent product claims 1, 4-6, 8-9, and 12-16, as amended, and claim 32 are allowable. Claim 19 contain all the limitations of claim 1; claim 33 contains all the limitations of claim 32. Thus, claims 19 and dependent claims 23-31, and claim 33 directed to processes of using the allowable products, should be considered for rejoinder and should be rejoined because the process claims commensurate in scope with the allowable product claims. In light of the foregoing, Applicants respectfully request consideration for the rejoinder and rejoinder of claims 19 and 23-31.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,  
Curtis Dobson  
DAVIS WRIGHT TREMAINE LLP

By   
Linda B. Truong, Esq.  
Registration No. 56,461

865 South Figueroa Street, Suite 2400  
Los Angeles, CA 90017-2566  
Phone: (213) 633-6800  
Facsimile: (213) 633-6899